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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,834	06/26/2000	Michael Kraus	39727/DBP/E43	2410

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EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 12/18/2001

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,834

Applicant(s)

KRAUS ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 59.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. Figures 1-10 are objected to under 37 CFR 1.83(a) because the rectangular boxes are not labeled as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to because it lacks section headings.

The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).

- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

3. The claims section should begin with a phrase such as: --What is claimed is:-- .

Appropriate correction is required.

Claim Objections

4. Claim 1 is objected to because of the following informalities: In line 7, "intervals" should be interval--. Appropriate correction is required.

5. The reference numerals in the claims are superfluous and should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims, as written, include phrases such as "characterized in that" and "wherein" and lack transitional phrases such as "consisting of" or "comprising", such that the scope of the claims is indeterminate. For purposes of this response, an open-ended transitional phrase is assumed to be included in the wording of the applicant's claims.

In claim 1, line 2, "in particular" is indefinite.

In claim 1, line 5, "the one transmitter/receiver unit" lacks antecedent basis.

In claim 1, lines 5-6, "the other transmitter/receiver unit" lacks antecedent basis.

In claim 1, line 9, "the reception readiness" lacks antecedent basis.

In claim 2, lines 1-2, "the receiving portion" lacks antecedent basis.

In claim 3, lines 3-4, "the next triggering signal" lacks antecedent basis.

In claim 5, line 2, "in particular" is indefinite.

In claim 5, lines 2-3, "the wearer" lacks antecedent basis.

In claim 8, line 7, "the second control information" lacks antecedent basis.

In claim 9, line 4, "the power supply" lacks antecedent basis.

In claim 12, line 10, "the answer" lacks antecedent basis.

In claim 13, lines 4-5, "the energy supply" lacks antecedent basis.

In claim 14, line 4, "preferably" lacks antecedent basis.

In claim 15, line 3, "the plausibility check" lacks antecedent basis.

In claim 16, line 3, "the initial condition" and "the first data exchange" lack antecedent basis.

In claim 17, lines 1-2, "the event of non-receipt of transmissions" lacks antecedent basis.

In claim 19, line 2, "the operating parameters" lacks antecedent basis.

In claim 21, line 2, "in particular" is indefinite.

In claim 21, line 5, "the one transmitter/receiver unit" lacks antecedent basis.

In claim 21, lines 5-6, "the other transmitter/receiver unit" lacks antecedent basis.

In claim 21, lines 8-9, "the reception readiness" lacks antecedent basis.

In claim 22, lines 1-2, "the receiving portion" lacks antecedent basis.

In claim 22, line 4, "the next triggering signal" lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-17, 19, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by de Coriolis (EPO 0607638). De Coriolis discloses a telemetry system for an implantable device including an implant device receiver (44) and transmitter (46) and an external programmer receiver (32) and transmitter (34). The telemetry circuit is used intermittently and contains a wakeup command transaction to enable full activation of the telemetry means (28) (c 10, ll 49-59). During periods of quiescence, the telemetry means, at spaced apart time intervals, enters a partially active state to detect energy transmissions. If energy is detected, further detection occurs seeking the transmitted initiation command. Once the initiation command is detected, the telemetry system becomes fully active, the receiver sends a response code and the communication transaction begins (c 11, ll 1-22 and c 20, ll 14-26). The outbound data packet is grouped in fixed length frames, read as intervals, with a preamble (58), a data field (62), a control byte (64), a frame check (containing error code to trigger resending of the data, read as a first acknowledgment) and a postamble (68) used for error detection (c 12, ll 9-33). The inbound data packet contains a leading flag (74), a data field (78), a control byte (76), a frame check (80) (containing error code to trigger resending of the data, read as a second acknowledgment) and a trailing flag (82) (c 14, ll 2-12). The preamble (58) and the leading flag (74) are read as the triggering signals; this frame contains a first data set and second data set respectively in the data

fields. The stay awake signal is read as the waiting time interval (c 21, ll 37-41). In is inherently understood transmission would not take place in a low battery scenario as therapeutic operations of the implant take priority.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Coriolis (EPO 0607638) in view of Wyborny et al. (US 5354319). As discussed in paragraph 8 of this action, de Coriolis discloses the claimed invention except for the intervals varying in length. Wyborney et al. disclose a telemetry system and teach that it is known to use variable interval lengths (c 5, ll 53-58). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the telemetry system as taught by de

Coriolis, with the variable interval lengths as taught by Wybroney et al. to compress the frame length so more data can be transmitted in a fixed time.

9. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Coriolis (EPO 0607638) in view of Fountain et al. (US 4625730). As discussed in paragraph 7 of this action, de Coriolis discloses the claimed invention except for the triggering signal being initiated by the wearer and having a telemetry communication occur when appropriate operating parameters exist. Fountain et al. disclose an ECG recording controller and teach that it is known to provide a manual means for initiating a triggering pulse to begin a transmission when the patient perceives an emergency situation (abstract and c 6, starting at l 23). The registering of an emergency by the patient is read as an appropriate operating parameter for initiating a communication transmission. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the telemetry system as taught by de Coriolis, with the manually initiated emergency signal and subsequent communication transmission as taught by Fountain et al. to provide a system with a means that enables the patient to get help when he perceives help is needed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone numbers for the

Art Unit: 3762

organization where this application or proceeding is assigned are (703) 306-4520 for regular communication and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
12/10/01

[Signature]
JEFFREY R. JASTRZAB
PRIMARY EXAMINER

3762

12/11/01